

PARTICIPANT AND REDEVELOPMENT AGREEMENT

[SPECO -- 1205 West Columbia Street Project]

THIS PARTICIPANT AND REDEVELOPMENT AGREEMENT (this "Agreement") is entered into as of the ____ day of _____, 2003 (the "Effective Date") by and between THE CITY OF SPRINGFIELD, OHIO, an Ohio municipal corporation (the "City") and MIDLAND PROPERTIES, INC., an Ohio corporation, ("Redeveloper").

RECITALS

WHEREAS, the City has identified and prioritized for redevelopment a property located at 1205 West Columbia Street, Springfield, Permanent Parcel No. 340-06-00005-328-002, 340-06-00005-328-0032, 340-06-00005-328-004, 340-06-00005-330-001, 340-06-00005-330-002 and 340-06-00005-330-006, as more fully described on **Exhibit A**, attached hereto and made a part hereof, (the "Property") which is environmentally distressed and meets the definition of a "Brownfield" pursuant to ORC Section 122.65(D); and

WHEREAS, the City has determined that there is significant environmental contamination on the Property needing remediation in preparation for its redevelopment and return to usefulness; and,

WHEREAS, Redeveloper has accepted the assignment from Thomas P. Loftis of a Purchase Agreement entered into between Thomas P. Loftis and Palco Investment Co. on October 17, 2002 and amended January 13, 2003 and Redeveloper has also entered into a related Escrow Agreement among Redeveloper, Palco Investment Co. and escrow agent, Mark F. Roberts, dated February 20, 2003 (collectively the "Purchase Agreement"), and now has the right to purchase the Property on or about February 20, 2004; and,

WHEREAS, the State of Ohio adopted House Bill 3, codified at Ohio Revised Code ("ORC") Sections 122.65 through 122.659 *et seq.* (the "Program") to assist municipalities and developers, financially and otherwise, to redevelop environmentally distressed properties known as Brownfields, which provides funding for clean up of certain environmentally contaminated properties from what is commonly known as the Clean Ohio Assistance Fund ; and

WHEREAS, Redeveloper has substantial experience in acquiring and marketing Brownfield sites for redevelopment ; and,

WHEREAS, the City and the Redeveloper have been engaged in negotiations concerning the availability of funding to assist with acquisition, demolition of the structures thereon (which have come to the end of their useful life and are a detriment to the Property), remediation of environmental contamination on the Property, preparation of the Property for the construction of improvements thereon and marketing of the Property to a business which will construct a building thereon and create employment at the Property (hereinafter the "Project"); and,

WHEREAS, the City wishes to return the Property to usefulness and to facilitate the accumulation of resources to the City to enable the redevelopment of other Brownfield properties in the Springfield community, both of which purposes will be facilitated by this Agreement; and,

WHEREAS, the City and Redeveloper have expended significant time, cost and effort in preparing applications for Clean Ohio Assistance Funds (each an “Application” and collectively the “Applications”) to assist in making the Project economically feasible; and,

WHEREAS, the Redeveloper has arranged for and obtained the following:

- A) A Phase I Property Assessment for the Property at a cost of \$5,012.81;
- B) An Asbestos Survey for the Property at a cost of \$5,775.73;
- C) A Phase II Property Assessment for the Property at a cost of \$41,845.06;

all of which costs are to be included as local match funding in support of the Application.

NOW, THEREFORE, in consideration of the mutual promises made herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City and Redeveloper agree as follows:

ARTICLE I THE CITY’S OBLIGATIONS

Section 1.01 Pursuit of Clean Ohio Funds. The City will, with the cooperation of Redeveloper, prepare and submit one or more Applications for funds from the Program for the Project (“Clean Ohio Assistance Funds”), to wit, application for One Million Dollars (\$1,000,000) from the Clean Ohio Assistance Fund. The City shall use good faith efforts to obtain all information reasonably necessary to prepare the Applications. If awarded, the City shall utilize the funds received from the Program for the Project, to the extent the use of such funds is consistent with the Program’s requirements and in accordance with the Applications. Redeveloper understands that the City may utilize the Clean Ohio Assistance Funds only for activities recognized by the State of Ohio as an appropriate use for Clean Ohio Assistance Funds for the Program and as provided for in this Agreement, including but not limited to paying for costs associated with site acquisition, site clearance, removal of abandoned personal property from the Property, demolition, site assessment, site remediation, environmental insurance premiums, site-related infrastructure and fees for engineers, scientists and other professionals necessary for proper performance of site assessment and remediation activities and design of site infrastructure; such costs being those described in the Project Budget document attached hereto as **Exhibit B** and made a part hereof.

Section 1.02 City Provision of Matching Funds. The City’s obligation to provide matching funds (“City Matching Funds”) is limited to providing the following:

- 1.021 Procuring a Supplemental Phase II Property Assessment for the Property for \$36,896.15; and
- 1.022 Procuring a Phase II Property Assessment administration services and Clean Ohio Assistance Fund compliance documentation for the Property for \$14,026.00.

The City is not required to provide any additional City Matching Funds to obtain a Clean Ohio Assistance Fund grant for the Project. In the event additional local matching funds are required to obtain a Clean Ohio Assistance Fund grant for the Project, for any reason, such additional local matching funding shall be provided by Redeveloper and not by the City.

Section 1.03 Acquisition Assistance Grant. On the closing date for conveyance of the Property from Palco Investment Co. to Redeveloper, the City shall pay to Redeveloper, out of available Clean Ohio Assistance Funds granted to the City, the sum of Fifty Two Thousand Three Hundred Twenty Five Dollars (\$52,325.00) to assist Redeveloper with acquisition of the Property and to induce Redeveloper to make the promises to the City contained in this Agreement.

Section 1.04 Permit Reviews. The City shall promptly review Redeveloper's request for permits necessary for redeveloping the Property. Without incurring any additional financing obligation, the City also shall utilize good faith efforts to assist the Redeveloper, as owner, in obtaining any other permits necessary from third-parties necessary for remediating or redeveloping the Property consistent with the Application and this Agreement.

Section 1.05 Property Remediation Plan. Immediately after the completion of the assessments described in Section 1.02, above, the City shall diligently proceed with preparation of a "Property Remediation Plan" specifying the remediation activities which the City will perform on the Property. The City intends to design its Property Remediation Plan so as to comply with the requirements of the Ohio Voluntary Action Program/Memorandum of Agreement with the United States Environmental Protection Agency ("Ohio VAP/MOA"). Upon completion of the Property Remediation Plan and securing the governmental approvals deemed necessary by the City for implementation of the Property Remediation Plan, the City will proceed with site clearance, environmental remediation, removal of abandoned personal property from the Property, and demolition of structures on the Property (herein the "Property Remediation Work") and shall diligently pursue the Property Remediation Work to completion within Thirty (30) months after the City has entered into a Clean Ohio Assistance Fund grant agreement with the State of Ohio; subject to the limitations described in this Agreement. Should the Property Remediation Work require modification to meet Redeveloper's needs which exceeds the line items in the Project Budget, Redeveloper shall so notify the City and the City shall prepare and submit to the Redeveloper a revision of the Property Remediation Plan specifying the additional work required to meet Redeveloper's needs and the City shall also submit to Redeveloper an estimate of the additional costs which shall be the responsibility of Redeveloper and an estimate of the additional time to complete such additional work for Redeveloper's review. If the City and Redeveloper agree to the plans, cost and timing of such additional work, this Agreement shall be amended to provide for the additional work and funding needed; however, in the event the parties hereto are unable to agree to an amendment to this Agreement, the additional work requested by Redeveloper shall be deemed not a part of Property Remediation Work for which the City is responsible and the additional work shall not be performed by the City.

Section 1.06 Environmental Remediation of the Property to Applicable Standards. The City intends to remediate the Property (a) to comply with risk-based remedial standards for commercial properties as provided under the Ohio VAP/MOA and (b) in accordance with the Property Remediation Plan. The City intends to acquire a No Further Action Letter from a VAP/MOA Certified Professional selected by the City and intends to request and pursue a Covenant Not to Sue from the Ohio EPA concerning the Property pursuant to the Ohio VAP/MOA. The parties acknowledge that it is not possible to stipulate or guarantee a date by which the No Further Action Letter and Covenant Not To Sue will be issued.

Section 1.07 Environmental Assessment Reports. The City shall provide to Redeveloper a copy of the written report generated from the above mentioned Supplemental Phase II Property Assessment for the Property and a copy of the above mentioned Clean Ohio Assistance Fund compliance documentation for the Property, all at no cost to Redeveloper.

Section 1.08 Development Incentives. The City shall work with Redeveloper, in good faith, to structure a package of redevelopment incentives designed to attract tenants and end-users for the Property, including but not limited to property tax abatement, machinery and equipment tax abatement and other incentives reasonably available and necessary to assist in the redevelopment of the Property. The Property is listed on the City's Tax Base Revitalization Incentive Site Priority List and eligible for waiver of certain fees in connection with redevelopment of the Property. Redeveloper shall participate in and comply with the requirements of the City's Tax Base Revitalization Incentive Pilot Program.

Section 1.09 City Participation Limited. Except as otherwise provided for in Sections 1.08 and 2.04, on and after the effective date of this Agreement, the City's obligation to expend funds in performance of the City's obligations under this Agreement is strictly limited to expending funds provided to the City by the State of Ohio pursuant to a Clean Ohio Assistance Fund grant designated for the Project. Under no circumstances shall the City be obligated to expend any other funds of any kind in performance of its obligations under this Agreement. This Section 1.06 shall supercede and control all other provisions of this Agreement.

Section 1.10 Redeveloper to be Able to Rely on the City's Environmental Assessments. The City shall obtain from each of the contractors and Certified Professionals performing the Supplemental Phase II Property Assessment for the Property a representation to Redeveloper that Redeveloper may rely upon the representations and opinions contained in such assessments as though such representations and opinions were given directly to Redeveloper for the purpose of Redeveloper being able to rely on the same and even though there is no privity of contract between Redeveloper and the contractor or Certified Professional performing the assessment. The City shall obtain the above mentioned representations to Redeveloper at no cost to Redeveloper.

ARTICLE II REDEVELOPER'S OBLIGATIONS

Section 2.01 Cooperation in Preparation of the Application. Redeveloper shall use good faith efforts to assist the City in preparing the Applications; including, but not limited to providing all information available to Redeveloper regarding the Property and signing all documents required of a property owner necessary to successful prosecution of the Applications.

Section 2.02 Acquisition of the Property. Redeveloper agrees to properly perform and enforce the Purchase Agreement and to exercise its rights under the Purchase Agreement so as to complete acquisition of the fee simple interest in the Property on or before March 31, 2004.

Section 2.03 Access to and Occupancy of the Property. Redeveloper grants to the City and its contractors, Certified Professionals and to the United States Environmental Protection Agency (“USEPA”) and the Ohio Environmental Protection Agency (“OEPA”) an irrevocable permission and license to enter onto and occupy the Property for the purpose of prosecuting and completing the Property Remediation Work and making such inspections as are necessary to ascertain compliance with Ohio VAP/MOA. This irrevocable permission and license to enter onto and occupy the Property will cease and terminate upon the issuance of the above mentioned No Further Action Letter and Covenant Not To Sue pertaining to the Property or upon the City’s voluntary waiver of its rights under this section, whichever occurs first.

Section 2.04 Fee Waivers Benefiting the Property. The Property is listed on the City’s Tax Base Revitalization Incentive Site Priority List and eligible for waiver of certain fees in connection with redevelopment of the Property. Redeveloper shall participate in and comply with the requirements of the City’s Tax Base Revitalization Incentive Pilot Program

Section 2.05 Post Property Remediation Work Site Preparation. After the City has completed all Property Remediation Work, Redeveloper shall construct the utility and roadway infrastructure described in **Exhibit C**, attached hereto and made a part hereof, (the “Site Preparation Work”) all at the cost of Redeveloper and not at City’s cost. The construction of the Site Preparation Work shall be completed within One Hundred Twenty (120) days after the City completes all Property Remediation Work.

Section 2.06 Property Maintenance. Redeveloper shall provide all utilities and maintenance for the Property (i.e. grass mowing, weed control, removal of garbage rubbish and trash, drainage of water from the Property, sidewalk maintenance and reconstruction and all other maintenance necessary to prevent nuisance and unattractive conditions on or emanating from the Property), all at the cost of Redeveloper and not at City’s cost. Clean up and removal of debris from the Property as a necessary part of Property Remediation Work does not constitute maintenance for purposes of applying this Section.

Section 2.07 Taxes, Assessments and Liability Insurance. Redeveloper shall timely pay all taxes and assessments imposed on the Property during the time that Redeveloper is an owner of the portion of the Property upon which such taxes and assessments are imposed. Redeveloper shall maintain a policy of liability insurance on the Property at Redeveloper’s expense, covering both bodily injury and property damage claims, with coverage of at least One Million Dollars (\$1,000,000.00) per occurrence and a deductible per occurrence of not more than Five Thousand Dollars (\$5,000.00). The said insurance policy shall name both Redeveloper and the City as insureds.

Section 2.08 City to be Able to Rely on Redeveloper’s Environmental Assessments. Within Fifteen (15) days of the Effective Date Redeveloper shall obtain from each of the contractors and Certified Professionals performing the following assessments:

- 2.061 The Phase I Property Assessment for the Property;
- 2.062 The Asbestos Survey for the Property; and,
- 2.063 The Phase II Property Assessment for the Property;

a representation to the City that the City may rely upon the representations and opinions contained in such assessments as though such representations and opinions were given directly to the City for the purpose of the City being able to rely on the same and even though there is no privity of contract between the City and the contractor or Certified Professional performing the assessment. Redeveloper shall obtain the above mentioned representations to the City at no cost to the City.

Section 2.09 Marketing of the Property.

(a) Within Fifteen (15) days of the Effective Date of this Agreement, Redeveloper shall prepare a marketing plan for the Property (the "Marketing Plan"). The Marketing Plan shall be prepared in consultation with the City, placing emphasis on developing the Property for commercial uses which will generate employment on the Property and which will further the municipal objectives set forth in the recitals to this Agreement. A copy of the Marketing Plan shall be delivered to the City for its review and reasonable approval and for the adoption of municipal legislation to amend this Agreement to adopt the approved Marketing Plan.

(b) Redeveloper shall have a period of five (5) years from the date of Ohio EPA's issuance of a Covenant-Not-To-Sue for the Property or a period of seven (7) years from the completion of Site Preparation Work, whichever is the shorter period, to redevelop the Property consistent with the Marketing Plan (the "Redevelopment Date").

ARTICLE III PROPERTY PROCEEDS ACCOUNT

Section 3.01 Establishment of Property Proceeds Account. Redeveloper shall open an interest bearing account (the "Property Proceeds Account") in a bank in Springfield, Ohio and shall deposit in such account the proceeds from the sale or land lease of any portion of the Property; net of 1) surveying costs, 2) a standard and reasonable sales commission and 3) the legal costs for deed or lease preparation, obtaining release of liens and services performed in closing the transaction. Redeveloper shall obtain a written closing statement, signed by a representative of Redeveloper and of the buyer/lessee, detailing the provision and application of funds pertaining to the transaction and calculating the net proceeds and shall deliver a true copy of such closing statement to the City. The City shall not be required to make any deposits into the Property Proceeds Account.

Section 3.02 Routine Disbursements from the Property Proceeds Account. Redeveloper may, from time to time, make withdrawals from the Property Proceeds Account to provide Redeveloper with funds necessary to pay to following legitimate expenditures:

- 3.021 Reimbursement to the City of any funds the City voluntarily deposited into the Property Proceeds Account;
- 3.022 Invoices for charges and expenses incurred pursuant to Section 2.07, above;
- 3.022 Invoices for reasonable and necessary maintenance costs incurred pursuant to Section 2.06, above;

- 3.023 Invoices for reasonable and necessary expenses incurred in performing marketing functions pursuant to Section 2.09, above;
- 3.025 Reimbursement to Redeveloper of any advance expense funding (i.e. funding other than proceeds from the sale or land lease of portions of the Property) deposited by Redeveloper into the Property Proceeds Account.
- 3.024 Reimbursement of allocated portions of the Property purchase price incurred by Redeveloper as determined pursuant to Section 3.03, below;

The forgoing list establishes the priority and order in which funds will be disbursed from the Property Proceeds Account, with item 3.021 being the top priority and first money to be disbursed from the Property Proceeds Account. At least five days prior to Redeveloper drawing upon the Property Proceeds Account, Redeveloper shall deliver to the City a written account specifying the items for which the draw is to be made along with a copy of each invoice and such other documentation as may be necessary to establish the draw as warranted by the terms of this Agreement. Redeveloper shall arrange for the bank holding the Property Proceeds Account to deliver to the City a duplicate copy of each bank statement which the bank issues pertaining to the Property Proceeds Account.

Section 3.03 Allocation of the Property Purchase Price for Reimbursement.

Redeveloper may receive a reimbursement of an allocated portion of the Property purchase price incurred by Redeveloper only after the sale or land lease of a portion of the Property to an end user who will put the portion of the Property disposed of to a commercial use which will generate employment on the Property and which will further the municipal objectives set forth in the recitals to this Agreement. The reimbursable portion of the Property purchase price incurred by Redeveloper shall be allocated to the portion of the Property sold at the rate of \$1.38 per square foot of the portion of the Property sold. For each lease year the annual reimbursable portion of the Property purchase price incurred by Redeveloper shall be allocated to the portion of the Property land leased at the rate of \$1.38 per square foot of the portion of the Property sold divided by the total number of years the subject portion of the Property is land leased.

Section 3.04 Disbursements of Surplus from the Property Proceeds Account. At the time the last portion of the Property is either sold or land leased or on the fifth (5th) anniversary of the first deposit into the Property Proceeds Account, which ever event occurs first (hereinafter the "First Division Date"), all disbursements authorized to be made from the Property Proceeds Account pursuant to Section 3.02, above, shall be made and the surplus remaining in the Property Proceeds Account shall be divided in to halves with one half to be disbursed to the City and the other half to be disbursed to Redeveloper. The disbursement of surplus shall be made within thirty (30) days of the First Division Date. In the event Redeveloper still retains an estate or an ownership interest in any portion of the Property on and after of the First Division Date, then at the time the last portion of the Property is sold (i.e. Redeveloper divests itself of all estates and ownership interests in Property in its entirety) (hereinafter the "Final Division Date"), all disbursements authorized to be made from the Property Proceeds Account pursuant to Section 3.02, above, shall be made and the surplus remaining in the Property Proceeds Account shall be divided in to halves with one half to be disbursed to the City and the other half to be disbursed to Redeveloper. The disbursement of surplus shall be made within thirty (30) days of the Final Division Date.

Section 3.05 Right to Audit. From the Effective Date until the December 31 of the calendar year following the calendar year during which Final Division Date occurs, the City shall have the right, at its sole cost and expense, to examine, copy and audit the books and records maintained by Redeveloper in connection with the Project. Redeveloper shall permit the City access to all books, records and accounts relating to the Project and all correspondence pertaining thereto at reasonable times upon reasonable notice. If the City shall notify Redeveloper of any errors or discrepancies in Redeveloper's accounting, financial transactions or record keeping concerning the Project, Redeveloper shall correct such errors or discrepancies as soon as reasonably possible after receipt of such notice, and Redeveloper shall promptly notify the City of the action taken to correct such errors or discrepancies.

ARTICLE IV REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION

Section 4.01 Representations and Warranties of the City. The City represents and warrants to Redeveloper that: (i) the City has the capacity and authority to execute this Agreement and perform its obligations under this Agreement and all actions necessary to authorize the execution, delivery and performance of this Agreement by the City have been taken and such actions have not been rescinded or modified; (ii) the City is not subject to any judgment or decree of a court of competent jurisdiction or governmental agency that would limit or restrict the City's right to enter and carry out this Agreement; (iii) neither the execution of this Agreement nor the consummation of the transactions contemplated herein will constitute a breach under any contract or agreement to which the City is a party or by which the City is bound or affected or which affects the Property or the Project; and (iv) the City has neither caused nor contributed to the release of hazardous substances or petroleum on the Property.

Section 4.02 Representations and Warranties of Redeveloper. Redeveloper represents and warrants to the City that: (i) Redeveloper has the capacity and authority to execute this Agreement and perform its obligations under this Agreement; (ii) all actions necessary to authorize the execution, delivery and performance of this Agreement by Redeveloper has been taken and such actions have not been rescinded or modified; (iii) Redeveloper is not subject to any judgment or decree of a court of competent jurisdiction or governmental agency that would limit or restrict Redeveloper's right to enter and carry out this Agreement; (iv) neither the execution of this Agreement nor the consummation of the transactions contemplated herein will constitute a breach under any contract or agreement to which Redeveloper is a party or by which Redeveloper is bound or affected; (v) the Redeveloper has neither caused nor contributed to the release of hazardous substances or petroleum on the Property, (vi) the Redeveloper will comply with applicable statutes and ordinances governing its ownership, occupancy and use of the Property and (vi) to the Redeveloper's knowledge, there are no actions, suits or proceedings pending or threatened before any judicial body or any governmental authority or any order, writ, injunction, decree or demand of any court or any governmental authority relating to the Property or any part thereof.

Section 4.03 Disclosure. The parties shall fully disclose to one another, promptly upon its occurrence, any change in facts, assumptions or circumstances of which either party becomes aware which may affect the representations and warranties set forth above.

Section 4.04 Mutual Indemnification. Each party (the “Indemnitor”) agrees to indemnify, defend and hold the other party (the “Indemnitee”) harmless from and against any and all losses, damages, claims, suits, actions, judgments, liabilities and expenses, including, without limitation, reasonable attorneys’ fees (collectively, “Losses”), arising out of, or with respect to: (A) any breach of any warranty or representation or any covenant or agreement of the Indemnitor under this Agreement; or (B) any injury to, or death of, persons and/or any damage to, or destruction of, property, on or about the Property and attributable to the negligence or misconduct of the Indemnitor, or its officers, employees, agents, contractors or invitees, except to the extent any such breach, any injury or death or any damage or destruction is attributable to the negligence or misconduct of the Indemnitee, or any of its officers, employees, agents, contractors or invitees, or as otherwise specifically provided in this Agreement; provided, however, that the indemnification obligation created by this Section shall be expressly conditioned upon the Indemnitee (i) delivering to the Indemnitor prompt notice of any event giving rise to such indemnification obligation and (ii) providing the Indemnitor the opportunity to defend itself from and against any Losses.

Section 4.05 Survival. The obligations set forth in Section 4.04 of this Agreement shall survive any termination of this Agreement.

ARTICLE V INSPECTIONS AND DEFAULT

Section 5.01 Inspection by the City. From the Effective Date until the Final Division Date, the City shall have the right, at its sole cost and expense (i.e. these costs are not reimbursable from the Property Proceeds Account), to inspect, examine and/or test the Property; provided that after the completion of Property Remediation Work is completed the City gives Redeveloper written notice of any such inspection, examination and/or test at least seven (7) days prior to such event(s), and further provided that any such inspections, examinations and/or tests shall not unreasonably interfere with or delay Redeveloper's marketing of the Property. The City shall promptly notify Redeveloper of any failure to comply with the obligations of Redeveloper under this Agreement reported to the City by any inspectors or consultants retained by the City. No inspection or review by the City shall be deemed to impose upon the City any duty or obligation whatsoever to correct any of Redeveloper's defaults under this Agreement, other than any duty the City may otherwise have. Notwithstanding anything contained herein to the contrary the City covenants and agrees, at its sole cost and expense (i.e. these costs are not reimbursable from the Property Proceeds Account): (i) to restore the Property after such inspection, examination and/or tests to a condition equivalent to that existing prior thereto, (ii) to perform all activities on the Property in a good, safe and lawful manner so as to prevent any damage to property or any injury or death to persons, and (iii) to indemnify and hold Redeveloper harmless from and against any actual loss, damage or injury to person or property resulting from the City's exercise of its inspection rights herein

Section 5.02 Inspection by the Redeveloper. During the period commencing with the Effective Date and continuing through the completion of the Property Remediation Work, the Redeveloper shall have the right, at its sole cost and expense (i.e. these costs are not reimbursable from the Property Proceeds Account), to inspect, examine and/or test the Property and the progress of the Project, provided that Redeveloper gives the City written notice of any such inspection, examination and/or test at least seven (7) days prior to such event(s), and further provided that any such inspections, examinations and/or tests shall not unreasonably interfere with or delay the City's Property Remediation Work. Redeveloper shall promptly notify the City of any failure to comply with the obligations of the City under this Agreement reported to Redeveloper by any inspectors or consultants retained by Redeveloper. No inspection or review by Redeveloper shall be deemed to impose upon Redeveloper any duty or obligation whatsoever to correct any of the City's defaults under this Agreement, other than any duty Redeveloper may otherwise have. Notwithstanding anything contained herein to the contrary Redeveloper covenants and agrees, at its sole cost and expense (i.e. these costs are not reimbursable from the Property Proceeds Account): (i) to restore the Property after such inspection, examination and/or tests to a condition equivalent to that existing prior thereto, (ii) to perform all activities on the Property in a good, safe and lawful manner so as to prevent any damage to property or any injury or death to persons, and (iii) to indemnify and hold the City harmless from and against any actual loss, damage or injury to person or property resulting from Redeveloper's exercise of its inspection rights herein. This Section is not intended to restrict Redeveloper's rights to inspect, examine and/or test the Property after the completion of the Property Remediation Work.

Section 5.03 Default. Should Redeveloper or the City breach any of the terms of this Agreement and fail to cure the breach within fifteen (15) days following receipt of written notice from the other with respect to a monetary breach, or within thirty (30) days following receipt of written notice from the other with respect to a non-monetary breach, either party shall have all rights and remedies available in law or equity including, without limitation, the right to require specific performance. The waiver of any notice by the City or Redeveloper shall not be considered a waiver of any subsequent default by Redeveloper or the City. Neither party shall have the right to set-off any claim for damages from any obligation to provide funds herein.

ARTICLE VI MISCELLANEOUS PROVISIONS

Section 6.01 Entire Agreement; Amendment. This Agreement and the recitals thereto, the exhibits attached hereto, and the documents, instruments, and agreements referred to herein collectively constitute the entire agreement between Redeveloper and the City with respect to the Project, and shall be binding upon, and inure to the benefit of the City and its successors and assigns and upon Redeveloper and its successors and assigns. This Agreement may only be amended or supplemented by a written document signed by all parties.

Section 6.02 Notices. All notices, consents, demands, waivers, approval and other communication made hereunder and in connection herewith shall in each case be addressed as follows:

If to the City:

City of Springfield, Ohio
76 East High Street
Springfield, Ohio 45502
Telephone: (937) 324-7305
Facsimile: (937) 328-3497
Attention: City Manager

If to Redeveloper:

Midland Properties, Inc.
2525 North Limestone Street
Springfield, Ohio 45503
Telephone: (937) 390-8800
Facsimile: (937) 390-8838

Any notices and other communications to be delivered by either party to the other pursuant to this Agreement shall be in writing and shall be deemed delivered as follows, except as otherwise specifically provided in this Agreement: (A) when hand delivered or faxed (provided that faxed notices must be confirmed within any applicable time period plus two (2) days by one of the following methods of notice); (B) one (1) business day after mailing by Federal Express or other overnight courier service; or (C) three (3) business days after deposit in the United States mail by registered or certified mail, postage prepaid, return receipt requested, addressed to the party to be charged with notice at the above-recited address or the above-recited fax number or such other address or fax number as either party from time to time may designate by notice delivered to the other; provided, however, that no notice of change of address or fax number shall be deemed given until received by the party to be notified.

Section 6.03 Governing Law. This Agreement was negotiated in the State of Ohio and shall be governed and construed in accordance with the internal laws of the State of Ohio.

Section 6.04 Assignment. This Agreement may not be assigned by either party without the express approval, in writing, of the other party.

Section 6.05 Force Majeure. Whenever either party to this Agreement shall be required to perform any contract, act, work, labor or service, or to comply with this Agreement, the Application, the Program, or any other laws, rules, orders, ordinances, regulations or zoning regulations, such party shall not be deemed to be in default under this Agreement and the other party shall not enforce or exercise any of its rights under this Agreement with regard to such other party's default if and for so long as such non-performance or default shall be caused by Force Majeure (hereinafter defined); provided, however, that such party shall commence such performance and continue the same with diligence and continuity immediately after the removal of any of the causes hereinafter specified. The provisions of this Section 6.05 shall not excuse any failure or delay in the payment of any monetary amount required to be paid in accordance with this Agreement, nor shall it excuse the City from performing if the City has direct or indirect control over any such Force Majeure event, nor shall it excuse the Redeveloper from performing if the Redeveloper has direct or indirect control over any such Force Majeure event. "Force Majeure" shall mean acts of God; acts of public enemies; fire or other casualties; acts, failure to act, orders, restraints or delays of any government or any governmental agency, department, committee, council or other entity; explosions; insurrections; failure or delay in obtaining permits or other approvals required under applicable law; civic disturbances; riots; delays of any contractor, subcontractor or supplier; litigation; strikes; landslides; earthquakes;

storms; winds in excess of 75 m.p.h.; hurricanes; tornadoes and floods; and other conditions beyond the reasonable control of the party whose obligations are excused.

Section 6.06 Further Assurances. Each party will, whenever and as often as it shall be requested by the other party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments and documents, including escrow instructions, as may be necessary in order to carry out the terms and conditions of this Agreement and to complete the sale, conveyance and transfer herein contemplated and shall do any and all other acts as reasonably may be requested in order to carry out the intent and purpose of this Agreement. Each party further covenants that from and after the Effective Date, each party shall use reasonable commercial efforts to cooperate with each other to secure all consents, approvals, authorizations and otherwise take such further actions necessary to effect the Project and other activities contemplated by this Agreement.

Section 6.07 Negation of Partnership; Third-Party Rights. Nothing contained in this Agreement shall be construed or interpreted as creating any agency, partnership, co-partnership or joint venture relationship between the parties hereto. Nothing contained herein, and nothing which may be implied hereby, is intended to or shall be construed to confer upon any person or entity, other than the parties hereto, any right or remedy under or by reason of this Agreement.

Section 6.08 Consents and Approvals to be Reasonable. Except as otherwise specifically provided in this Agreement, all consents and approvals required under this Agreement shall not be unreasonably withheld or delayed, and in the case of the City shall be given by the City Manager, unless otherwise required by applicable law, and in the case of Redeveloper shall be given by any authorized officer of Redeveloper. To the extent permitted by law, either party shall be entitled to conclusively rely on the consent or approval of the other provided the same is executed by those persons holding the offices or authorized to perform the duties of such offices specified herein.

Section 6.09 Failed Negotiations. If prior to the City entering into a Clean Ohio Assistance Fund grant agreement and after good faith negotiations by both parties hereto, they are unable to agree on an approved Marketing Plan or an approved, revised Project Budget, either party may terminate this Agreement by giving written notice of termination to the other party. If this Agreement is terminated in accordance with this Section, then all documents and instruments deposited by Redeveloper shall be immediately returned to Redeveloper, and all documents and instruments deposited by the City shall be immediately returned to the City. Upon the return of all such documents and instruments, the parties shall be released from any further obligations hereunder to each other.

Section 6.10. Counterpart Execution. This Agreement may be executed in several counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument, notwithstanding that all of the parties are not signatories to the same counterpart. A fax or photo copy of this Agreement shall be enforceable as if such fax or photo copy was an original.

Section 6.11. Headings; Construction. The headings which have been used throughout this Agreement have been inserted for convenience of reference only and do not constitute matters to be construed in interpreting this Agreement. Words of any gender used in this agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise. If the last day of any time period stated herein shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday. Should any part, term or provision of this Agreement be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

Section 6.12 Failure of Applications. In the event the Applications are unsuccessful and no Clean Ohio Assistance Funds are granted to the City, then, excepted as provided in Section 4.05, above, this Agreement shall terminate and be of no further force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

APPROVED AS TO FORM
AND CORRECTNESS:

THE CITY OF SPRINGFIELD, OHIO

Deputy Law Director

BY: _____
Matthew J. Kridler, City Manager

Date _____

MIDLAND PROPERTIES, INC.

I hereby certify that the money required for payment of the above obligation in the sum of \$_____ at the time of the making of this contract or order, was lawfully appropriated for such purpose and was in the treasury or in process of collection to the credit of the proper item of appropriation free from any previous encumbrance.

BY: _____
Thomas P. Loftis, President

Finance Director

Exhibit A

Legal Description of Land

Exhibit B

Project Budget

Exhibit C

Description of Site Preparation Work